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7 UNITED STATES DISTRICT COURT
8 CENTRAL DISTRICT OF CALIFORNIA
9 WESTERN DIVISION
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11 LUCIUS KELLEY,) No. ED CV 06-00451-VBK
12)
13 Plaintiff,) MEMORANDUM OPINION AND ORDER
14)
15 v.) (Social Security Case)
16)
17 JO ANNE B. BARNHART,)
18 Commissioner of Social)
19 Security,)
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21 Defendant.)
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18 This matter is before the Court for review of the decision by the
19 Commissioner of Social Security denying Plaintiff's application for
20 disability benefits. Pursuant to 28 U.S.C. §636(c), the parties have
21 consented that the case may be handled by the Magistrate Judge. The
22 action arises under 42 U.S.C. §405(g), which authorizes the Court to
23 enter judgment upon the pleadings and transcript of the record before
24 the Commissioner. The parties have filed their pleadings and
25 supporting memoranda, and the Commissioner has filed the certified
26 Administrative Record ("AR"). After reviewing the matter, the Court
27 concludes that the decision of the Commissioner must be affirmed.

28 Plaintiff raises two related arguments. First, he asserts that

1 the Administrative Law Judge ("ALJ") did not properly consider the
2 opinion of a consultative examiner ("CE"). The second issue asserts
3 that the ALJ's failure to include functional limitations assessed by
4 this CE in hypothetical questions posed to the vocational expert
5 ("VE") create reversible error.

6 Plaintiff received a consultative internal medicine evaluation on
7 March 24, 2004 from Dr. Lin. (AR 173-177.) Dr. Lin performed a
8 complete physical examination, and among his conclusions regarding
9 Plaintiff's functional abilities, he opined that Plaintiff can lift or
10 carry 20 pounds occasionally and 10 pounds frequently; can stand and
11 walk for up to two hours in an eight-hour work day; and can sit for
12 six hours in an eight-hour work day. (AR 177.) The ALJ assessed
13 Plaintiff's residual functional capacity ("RFC") as including an
14 ability to perform a limited range of light work, lifting and carrying
15 20 pounds on an occasional basis, and 10 pounds on a frequent basis;
16 standing/walking four hours in an eight-hour day, with use of a cane
17 for balance when standing; and sitting for six hours in an eight-hour
18 day. Thus, with the exception of the stand/walk limitations, the ALJ
19 agreed with Dr. Lin's functional assessments. (AR 17.) It is the
20 difference in the stand/walk assessment which Plaintiff asserts is the
21 source of the error. In particular, Plaintiff complains that the ALJ
22 simply ignored this aspect of Dr. Lin's conclusions. Plaintiff
23 asserts that the ALJ therefore failed to provide specific and
24 legitimate reasons for rejecting this portion of Dr. Lin's opinion.
25 (Joint Stipulation ["JS"] at 3-4.)

26 The Commissioner denies that the ALJ simply ignored this portion
27 of Dr. Lin's conclusions. Rather, the argument made is that the ALJ
28 specifically cited Dr. Lin's findings with regard to Plaintiff's

1 functional performance during his examination which, the Commissioner
2 asserts, did not support the limitations assessed by Dr. Lin. (See JS
3 at 6.) Thus, the Commissioner argues that the ALJ took note of Dr.
4 Lin's findings that Plaintiff was able to walk identically with or
5 without a cane; that he was able to stand on his heels and toes and
6 perform a tandem gait; and that he exhibited good active motion
7 bilaterally with full 5/5 strength in all extremities. (JS at 6,
8 citing AR at 18, 174, 176.) Further, the ALJ cited other findings by
9 Dr. Lin during his examination of Plaintiff's back, which included
10 some limitations in back motion, but a lack of tenderness to palpation
11 in the midline or paraspinal areas; a normal straight leg testing
12 result; and grossly normal bilateral range of motion in all
13 extremities, with the exception of some decreased sensation in his
14 lower legs, neurological findings being completely normal. (AR 19,
15 175, 176.)

16 It is apparent to the Court that the ALJ did not ignore Dr. Lin's
17 conclusions, but rather, did not adopt this portion of Dr. Lin's
18 functional assessment because it conflicted with the examination
19 findings.

20 It is the duty of the ALJ to resolve conflicts in medical
21 evidence and testimony. See Thomas v. Barnhart, 278 F.3d 947, 957 (9th
22 Cir. 2002). In performing these analytical functions, the ALJ may not
23 selectively analyze evidence. See Howard ex rel. Wolff v. Barnhart,
24 341 F.3d 1006, 1012 (9th Cir. 2003). That certainly does not appear
25 to have occurred in this case, in which the ALJ fully assessed the
26 relevant findings made by Dr. Lin. It was within the ALJ's
27 prerogative to reject all or parts of these findings if they were
28 inconsistent with the physical examination results. See Flaten v.

1 Secretary of Health and Human Services, 44 F.3d 1453, 1463 (9th Cir.
2 1995). Finally, although the ALJ must comprehensively analyze
3 evidence in the record, a decision is not rendered incomplete,
4 inaccurate, or incorrect simply because an ALJ does not explicitly
5 articulate his acceptance or rejection of each and every conclusion of
6 an examining physician. See Magallanes v. Bowen, 881 F.2d 747, 751-
7 755 (9th Cir. 1989). In this case, the Court is satisfied that the RFC
8 adopted by the ALJ, although it did not include Dr. Lin's conclusions
9 with regard to Plaintiff's stand/walk limitations, is based on
10 substantial evidence, and that the rejection of Dr. Lin's conclusions
11 with regard to the stand/walk limitations is supported by specific and
12 legitimate reasons.

13 Having addressed the first issue, the conclusion regarding the
14 second issue raised by Plaintiff is obvious. Plaintiff's assertion is
15 that the ALJ's failure to include Dr. Lin's stand/walk limitations in
16 hypothetical questions to the VE renders the VE's testimony
17 inaccurate, and that, therefore, the ALJ's decision which adopted some
18 of this testimony is not based on substantial evidence. While the law
19 requires an ALJ to include all found limitations in hypothetical
20 questions to a VE, it does not mandate that restrictions or
21 limitations which are not supported by substantial evidence must be
22 also included. See Osenbrock v. Apfel, 240 F.3d 1157, 1164-1165 (9th
23 Cir. 2001). Thus, there is no error with regard to Plaintiff's
24 assertion that the ALJ posed an incomplete question to the VE.

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1 For the above reasons, the Decision will be affirmed, and the
2 matter will be dismissed with prejudice.

3 **IT IS SO ORDERED.**

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5 DATED: February 16, 2007

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7 /s/
8 VICTOR B. KENTON
9 UNITED STATES MAGISTRATE JUDGE
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